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UNITED STATES OF AMERICA

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,) CV. NO. 07-00597 HG-LEK
) CR. NO. 02-00341-03 HG
Plaintiff,)
) MOTION FOR ORDER WAIVING
vs.) DEFENDANT'S ATTORNEY-CLIENT
) PRIVILEGE WITH RESPECT TO THE
ROBERT R. MALDONADO, JR.,) INSTANT 2255 PROCEEDINGS
)
Defendant.)
)

MOTION FOR ORDER WAIVING DEFENDANT'S ATTORNEY-CLIENT
PRIVILEGE WITH RESPECT TO THE INSTANT 2255 PROCEEDINGS

Defendant Maldonado has filed an untimely motion under 28 U.S.C. § 2255 to vacate, set aside, or correct sentence. Defendant Maldonado's motion is premised upon the alleged ineffective assistance of counsels Rustam A. Barbee and Shawn A. Ruiz.

Defendant claims in his motion that Mr. Barbee was ineffective as counsel by failing to address at sentencing and that Mr. Ruiz was ineffective by failing to address on direct appeal "all Sentencing Guideline Misapplications." Given defendant's allegations, this Court should order that defendant has waived attorney-client privilege with respect to his prior legal representation by Rustam A. Barbee and by Shawn A. Ruiz such that Mr. Barbee and Mr. Ruiz submit declarations, be interviewed and/or called as a witness, if necessary, and the files reviewed for relevant evidence.

Federal law is clear that:

Attorney-client privilege "was intended as a shield, not a sword." [citations omitted] in other words, "(a) defendant may not use the privilege to prejudice his opponent's case or to disclose some selected communications for self-serving purposes."

Cox v. Administrator, U.S. Steel, 17 F.3d 1386, 1417 (11th Cir. 1994), modified 30 F.3d 1347 (11th Cir.), cert. denied 115 S. Ct. 900.

By making his direct accusations of ineffective assistance against counsels Rustam A. Barbee and Shawn A. Ruiz in this case, defendant has waived all attorney-client privilege with respect thereto.

The allegations in defendant Maldonado's motion under 28 U.S.C. § 2255 necessitate the waiver of the attorney-client privilege in order for this Court to hear all of the relevant evidence regarding the alleged issues of ineffective assistance of counsel. For the foregoing reason, the United States submits that the instant motion should be granted and the appended, proposed Order should be issued by this Court.

DATED: December 12, 2007, at Honolulu, Hawaii.

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By /s/ Thomas C. Muehleck
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